

OSCAR PERALTA, ESQ.
Nevada Bar No. 13559
PERALTA LAW GROUP
101 Convention Center Dr., Ste. 340
Las Vegas, NV 89109
Tel: (702) 758-8700 | Fax: (702) 758-8704
Oscar@peraltalawgroup.com
Attorney for Plaintiff

Electronically Filed
Dec 15 2020 11:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

MAX VARGAS,

Plaintiff,

Case No. : A-18-768988-C

Dept. No.: 32

v.

ORTIZ FAMILY LLC d/b/a EL SELLITO
ROJO; J MORALES INC.; DOE BOUNCERS
I-V; DOES VI-X; and ROE CORPORATIONS
X-XV, inclusive,

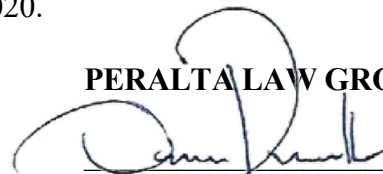
Defendants.

NOTICE OF APPEAL

NOTICE is hereby given that Plaintiff, MAX VARGAS, by and through his attorney of record, OSCAR PERALTA, ESQ., of PERALTA LAW GROUP, hereby appeal to the Supreme Court of Nevada from the Order granting Defendant J MORALES INC.'s Motion to Set Aside Judgment entered in this action on the 24th day of November, attached hereto as Exhibit "A".

DATED this 11th day of December, 2020.

PERALTA LAW GROUP



OSCAR PERALTA, ESQ.
101 Convention Center Dr., Ste. 340
Las Vegas, NV 89109
Attorney for Plaintiff

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Ogonna M. Brown, Esq.
Lewis Roca Rothberger Christie LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorney for Defendant J Morales Inc.


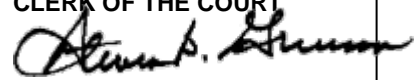

An Employee of Peralta Law Group

EXHIBIT A

EXHIBIT A



OGM
Ogonna Brown, Esq.
Nevada Bar No. 7589
obrown@lrrc.com
Adrienne Brantley-Lomeli, Esq.
Nevada Bar No. 14486
abrantley-lomeli@lrrc.com
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Fax: 702.949.8398

Counsel for Defendant J Morales Inc.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MAX VARGAS, individually;

Plaintiff,

v.

ORTIZ FAMILY LLC, d/b/a EL SELLITO
ROJO; J MORALES INC.; DOE
BOUNCERS I – V; DOES VI – X; and ROE
CORPORATIONS I through X-XV, inclusive,

Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**ORDER GRANTING J MORALES INC.'S
EMERGENCY MOTION TO SET ASIDE
JUDGMENT AND STAY EXECUTION
OF JUDGMENT**

Date of Hearing: November 10, 2020

Time of Hearing: 11:00 a.m.

Judge: Hon. Rob Bare

On November 10, 2020, this matter came on for hearing on shortened time on Defendant J Morales Inc.'s ("JMI") Emergency Motion to Set Aside Judgment and Stay Execution of Judgment ("Motion") in Department XXXII of the Eighth Judicial District Court, Clark County, Nevada, with Hon. Rob Bare presiding. Adrienne Brantley-Lomeli, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP appeared on behalf of JMI, and Oscar Peralta, Esq. of the law office of Peralta Law Group appeared on behalf of Plaintiff, Max Vargas ("Plaintiff").¹ The Court having considered the Motion and filings related thereto, having heard the arguments presented by the Parties concerning the Motion, taking this matter under advisement after entertaining the oral argument of the Parties, and good cause appearing therefor, the Court hereby finds and concludes as follows:

...

...

¹ Collectively, the Plaintiff and the Defendants shall be referred to hereinafter as the "Parties".

FINDINGS OF FACT

1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay Execution of Judgment, and incorporates them as though fully set forth herein.

2. This case stems from an alleged incident that occurred on March 22, 2017.

3. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC (“OFLLC”) (collectively, JMI and OFLLC shall be referred to hereinafter as “Defendants”).

4. El Sellito Rojo’s principal place of business is 3977 E. Vegas Valley Drive, Las Vegas, Nevada, 89121 (APN 161-07-701-002) (the “Property”).

5. Plaintiff filed his Complaint on February 5, 2018.

6. Per Affidavits of Service filed with the Court on April 3, 2018, Defendants were personally served via their registered agents.

7. Defendants failed to file an Answer or otherwise make an appearance.

8. Thus, Default was filed against each Defendant on April 13, 2018.

9. Plaintiff then sought default judgment by filing an Application on September 19, 2018.

10. After a prove-up hearing held on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants (“Judgment”).

11. Notice of Entry of Default Judgment was filed on August 6, 2019.

12. Defendant JMI filed the instant Motion on October 27, 2020 after its bank account was garnished sometime in September 2020.

13. In its Motion, JMI requested setting aside the Judgment and allowing the case to be heard on its merits, to stay of execution of the Judgment to prevent any further seizure of JMI’s assets prior to the Court’s final determination on the Motion.

14. On November 6, 2020, Plaintiff filed his Opposition to the Motion (“Opposition”).

15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).

18. To the extent any of the foregoing Findings of Fact are more properly deemed a Conclusion of Law, they may be so construed.

- a. (1) Prompt application to remove the judgment;
- b. (2) absence of an intent to delay;
- c. (3) lack of knowledge of procedural requirements; and
- d. (4) good faith.

1 *Yochum v. Davis*, 653 P.2d 1215, 98 Nev. 484 (1982). *See also Rodriguez v. Fiesta Palms, LLC*,
2 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned *Yochum*
3 factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.)

4 6. In addition, the Court must also consider the state's underlying basic policy of
5 deciding a case on the merits whenever possible. *Id.*

6 7. Most recently, in *Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d
7 176 (2020), the Nevada Supreme Court again affirmed the use of *Yochum* factors in determining the
8 existence of sufficient grounds for NRCP 60(b)(1) relief from either order or judgment.
9 Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect
10 to the four *Yochum* factors to facilitate . . . appellate review of NRCP 60(b)(1) determinations for
11 an abuse of discretion."

12 8. Under NRCP 62(b), with posting of a security, the court may stay execution of a
13 judgment pending disposition of NRCP 60 relief from a judgment or order.

14 9. Accordingly, the Court **FINDS** that the default judgment was properly obtained.
15 Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was
16 almost 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019 even
17 though both Defendants were validly served with complaint and summons.

18 10. The Court **FINDS** that the correct standard to use for setting aside the judgment for
19 mistake under NRCP 60(b)(1) is the 4-factor test set forth in *Yochum*, *Rodriguez*, and *Willard*, as
20 follows:

- 21 (1) Prompt application to remove the judgment;
- 22 (2) absence of an intent to delay;
- 23 (3) lack of knowledge of procedural requirements; and
- 24 (4) good faith.

25 11. Defendant JMI, as the party seeking to set aside the default judgment, has the burden
26 of proof under preponderance of the evidence standard.

27 12. Although Plaintiff argues that this standard is conjunctive, the standard actually
28 appears to be a balancing test.

1 13. Although the word “and” is indeed used, in *Rodriguez*, the Nevada Supreme Court
2 ruled that the District Court must “balance the preference for resolving cases on the merits with the
3 importance of enforcing procedural requirements” and it analyzed all four factors in affirming the
4 order of the District Court that denied motion to set aside the judgment, which it need not do if the
5 factors were indeed conjunctive.

6 14. The Court **FINDS** that the balancing of the factors militates in favor of granting the
7 motion and setting aside the default judgment.

8 15. The Court **FINDS** that as to the first factor, prompt application to remove the
9 judgment, this factor does not favor JMI. JMI failed to file its Motion until October 27, 2020, almost
10 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019. Thus, under
11 NRCP 60(c), which requires such motion to be filed within 6 months, the motion is presumptively
12 untimely.

13 16. The Court **FINDS** that as to the second factor, absence of an intent to delay, this
14 factor favors JMI. JMI makes a credible argument that once it became actually aware of the default
15 judgment due to the Writ of Garnishment executed in September 2020, it immediately retained
16 counsel and sought to set it aside to protect its financial interests without an intent to delay the
17 proceedings. Plaintiff does not make any specific argument against this factor.

18 17. The Court **FINDS** that as to the third factor, lack of knowledge of procedural
19 requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by
20 sophisticated businessmen who simply chose to sit on their rights and refused to participate in the
21 case, but JMI’s actions show otherwise. Instead of consulting with an attorney, JMI simply consulted
22 with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since
23 it did not own the nightclub at the time of the incident, that it is not liable.

24 18. The Court **FINDS** that as to the four factor, good faith, this factor also favors JMI as
25 Plaintiff does not make any specific argument that JMI's motion was not made in good faith.

26 19. The Court **FINDS** that as to JMI's argument regarding the meritorious defense, it is
27 not a factor under *Rodriguez* and *Willard* for NRCP 60(b)(1) analysis. However, it can be considered
28 under a NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if

JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified.

20. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6).

21. The Court **FINDS** that the basic policy of deciding a case on the merits also undoubtedly favors JMI.

22. To the extent any of the foregoing Conclusions of Law are more properly deemed a Finding of Fact, they may be so construed.

ORDER

Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,

1. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant JMI's Motion shall be **GRANTED**.

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be **VACATED** as to Defendant JMI.

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant JMI shall file its Answer within 10 days of the filing of this Order.

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the dispute over the funds already garnished by Plaintiff from JMI's bank account shall be determined in the future when the case is heard on the merits.

Dated this 24th day of November, 2020.



DISTRICT COURT JUDGE

ROB BARE

HBL

Respectfully Submitted:
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna Brown, Esq. (NBN 7589)
Adrienne Brantley-Lomeli, Esq. (NBN 14486)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Attorneys for Defendant J Morales Inc.

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Approved as to form:
PERALTA LAW GROUP

By: /s/ Oscar Peralta
OSCAR PERALTA, ESQ. (NBN 13559)
101 Convention Center Dr., Suite 340
Las Vegas, Nevada 89109
(702) 758-8700
Attorneys for Plaintiff

From: Oscar Peralta <oscar@peraltalawgroup.com>
Sent: Monday, November 23, 2020 5:28 PM
To: Brown, Ogonna
Cc: Jackson, Kennya; Dale, Margaret
Subject: Re: Order Granting Motion to Set Aside Judgment(112817796.1).docx

[EXTERNAL]

Confirmed. Thank you

On Mon, Nov 23, 2020 at 5:09 PM Brown, Ogonna <OBrown@lrrc.com> wrote:

Thanks, Oscar. Please confirm that I may affix your electronic signature. Have a good night.

Ogonna Brown

Partner
702.474.2622 office
702.949.8398 fax
OBrown@lrrc.com

COVID-19 questions?
Connect to our [Rapid Response Team](#)
for answers and resources.

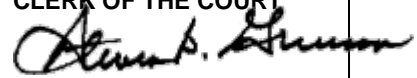
Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com



Because what matters
to you, matters to us.

[Read](#) our client service principles



OSCAR PERALTA, ESQ.
Nevada Bar No. 13559
PERALTA LAW GROUP
101 Convention Center Dr., Ste. 340
Las Vegas, NV 89109
Tel: (702) 758-8700
Fax: (702) 758-8704
Oscar@peraltalawgroup.com
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

MAX VARGAS,

Plaintiff,

Case No. : A-18-768988-C

Dept. No.: 32

v.

ORTIZ FAMILY LLC d/b/a EL SELLITO
ROJO; J MORALES INC.; DOE BOUNCERS
I-V; DOES VI-X; and ROE CORPORATIONS
X-XV, inclusive,

Defendants.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: **Max Vargas.**
2. Identify the judge issuing the decision, judgment, or order appealed from: **Rob Bare,**
District Court Judge, Department 32.
3. Identify the appellants and the name and address of counsel for each: **Plaintiff Max**
Vargas, represented by Oscar Peralta of Peralta Law Group, 101 Convention
Center Dr., Ste. 340, Las Vegas, NV 89109.

///

///

- 1 4. Identify the respondent and the name and address of counsel for each: **Defendant J**
2 **MORALES INC., represented by Ogonna Brown of Lewis Roca Rothberger**
3 **Christie LLP, 3993 Howard Hughes Pkwy., Ste. 600, Las Vegas, NV 89169.**
4
- 5 5. Identify whether any attorney above is not licensed to practice law in Nevada: **N/A.**
- 6 6. Indicate whether appellant was represented by appointed or retained counsel in the
7 District Court: **Appellant was represented by retained counsel in the District Court.**
- 8 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
9 **Appellant is represented by retained counsel on appeal.**
- 10 8. Indicate whether appellant was granted leave to proceed in forma pauperis and the date of
11 entry of the District Court Order granting such leave: **Appellant was not granted leave**
12 **to proceed in forma pauperis.**
- 13
- 14 9. Indicate the date the proceedings commenced in the District Court: **Proceedings**
15 **commenced on February 5, 2018, the date the Complaint was filed in District Court.**
- 16
- 17 **10. Provide a brief description of the nature of the action and result in the District Court,**
18 **including the type of judgment or order being appealed and the relief granted by the**
19 **District Court: This is a case for personal injuries arising out of a brutal attack**
20 **against Plaintiff Max Vargas perpetrated on March 22, 2017 by employees of EL**
21 **Sellito Rojo nightclub, operated by Defendant ORTIZ FAMILY LLC d/b/a EL**
22 **SELLITO ROJO on real property owned by Defendant J MORALES INC. in fact**
23 **or by operation of law. A default judgment was obtained after Defendants failed to**
24 **make any appearance in the case. Defendant J MORALES INC. was served with the**
25 **Summons and Complaint on February 16, 2018. On April 17, 2018, Defendant J**
26 **MORALES INC. was served with a copy of the Notice of Entry of Default. Finally,**
27
28

1 on August 6, 2019, Defendant J MORALES INC. was served with a copy of the
2 Notice of Entry of Order of Default Judgment. Nearly 15 months later, on October
3 27, 2020, Defendant J MORALES INC. filed a motion to set aside the judgment
4 pursuant to NRCP 60(b), predicated on the allegation of Defendant J MORALES
5 INC.'s manager, Jose Morales, that Defendant mistakenly believed that it did not
6 have to defend the suit or otherwise appear in the action because a non-attorney
7 insurance agent advised Mr. Morales that Defendant would not be held liable for
8 any damages claimed in Plaintiff's lawsuit. Plaintiff opposed the motion principally
9 on the grounds that the District Court lacked jurisdiction because more than six
10 months had elapsed since the date of service of written notice of entry of the default
11 judgment. The District Court judge granted Defendant J MORALES INC.'s motion
12 to set aside the judgment. This appeal follows.

13
14
15 11. Indicate whether the case has previously been the subject of an appeal to or original writ
16 proceeding in the Supreme Court, and, if so, the caption and Supreme Court docket
17 number of the prior proceeding: **This case has not been the subject of prior appeals or**
18 **writ proceedings.**

19
20 12. Indicate whether this appeal involves child custody or visitation: **None involved.**

21 ///

22 ///

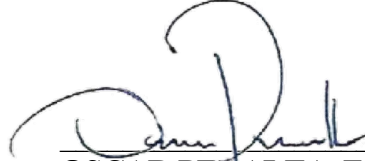
23 ///

1 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

2 **At this point in time, there is no possibility of settlement.**

3 DATED this 11th day of December, 2020.

4 **PERALTA LAW GROUP**

5 

6 **OSCAR PERALTA, ESQ.**

7 Nevada Bar No. 13559

8 101 Convention Center Dr., Ste. 340

9 Las Vegas, NV 89109

10 Tel: (702) 758-8700


11 Fax: (702) 758-8704

12 Email: oscar@peraltalawgroup.com

13 *Attorney for Plaintiff*

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Ogonna M. Brown, Esq.
Lewis Roca Rothberger Christie LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorney for Defendant J Morales Inc.


An Employee of Peralta Law Group

CASE SUMMARY**CASE NO. A-18-768988-C****Max Vargas, Plaintiff(s)****vs.****Ortiz Family, LLC, Defendant(s)**§
§
§
§
§Location: **Department 32**Judicial Officer: **Bare, Rob**Filed on: **02/05/2018**Cross-Reference Case **A768988**

Number:

CASE INFORMATION**Statistical Closures**

07/25/2019 Default Judgment

03/22/2019 Involuntary Dismissal

Case Type: **Negligence - Other Negligence**Case
Status: **07/25/2019 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-18-768988-C
Court	Department 32
Date Assigned	02/05/2018
Judicial Officer	Bare, Rob

PARTY INFORMATION**Plaintiff****Vargas, Max***Lead Attorneys***Peralta, Oscar***Retained*

702-758-8700(W)

Defendant**J. Morales, Inc.****Brantley, Adrienne R.***Retained***Ortiz Family, LLC****Brantley, Adrienne R.***Retained***DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

02/05/2018



Complaint

Filed By: Plaintiff Vargas, Max

Complaint

02/05/2018



Summons Electronically Issued - Service Pending

Party: Plaintiff Vargas, Max

Summons - Ortiz Family LLC d/b/a El Sellito Rojo

02/05/2018



Summons Electronically Issued - Service Pending

Party: Plaintiff Vargas, Max

Summons - J Morales, Inc.

04/03/2018



Affidavit of Service

Filed By: Plaintiff Vargas, Max

Affidavit of Service

04/03/2018



Affidavit of Service

CASE SUMMARY

CASE NO. A-18-768988-C

	<p>Filed By: Plaintiff Vargas, Max <i>Affidavit of Service</i></p>
04/13/2018	<p> Default Filed By: Plaintiff Vargas, Max <i>Default</i></p>
04/13/2018	<p> Default Filed By: Plaintiff Vargas, Max <i>Default</i></p>
04/17/2018	<p> Notice of Entry of Default Party: Plaintiff Vargas, Max <i>Notice of Entry of Default - Ortiz Family LLC d/b/a El Sellito Rojo</i></p>
04/17/2018	<p> Notice of Entry of Default Party: Plaintiff Vargas, Max <i>Notice of Entry of Default - J Morales Inc.</i></p>
09/19/2018	<p> Memorandum of Costs and Disbursements Filed By: Plaintiff Vargas, Max <i>Memorandum of Costs and Disbursements</i></p>
09/19/2018	<p> Application for Default Judgment Party: Plaintiff Vargas, Max <i>Application for Default Judgment</i></p>
09/19/2018	<p> Affidavit in Support of Default Judgment Filed By: Plaintiff Vargas, Max <i>Affidavit in Support of Default Judgment</i></p>
03/22/2019	<p> Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i></p>
07/25/2019	<p> Default Judgment Filed By: Plaintiff Vargas, Max <i>Default Judgment</i></p>
08/06/2019	<p> Notice of Entry Filed By: Plaintiff Vargas, Max <i>Notice of Entry of Order</i></p>
09/24/2020	<p> Notice of Appearance Party: Plaintiff Vargas, Max <i>Notice of Appearance</i></p>
09/24/2020	<p> Writ Electronically Issued <i>Writ of Execution Wells Fargo Bank - Bank Accounts and CDs</i></p>
09/24/2020	<p> Writ Electronically Issued <i>Writ of Execution - Wells Fargo Safe Deposit Boxes</i></p>
10/27/2020	<p> Motion to Set Aside Default Judgment</p>

CASE SUMMARY

CASE NO. A-18-768988-C

Filed By: Defendant J. Morales, Inc.
Emergency Motion to Set Aside Judgment and Stay Execution of Judgment on an Order Shortening Time

11/06/2020



Opposition

Filed By: Plaintiff Vargas, Max
Plaintiff's Opposition to Defendant J MORALES INC.'s Motion to Set Aside Judgment

11/09/2020



Reply

Filed by: Defendant J. Morales, Inc.
Reply In Support Of Emergency Motion To Set Aside Judgment And Stay Execution Of Judgment

11/24/2020



Order Granting Motion

Order Granting J Morales Inc.'s Emergency Motion to Set Aside Judgment and Stay Execution of Judgment

11/24/2020



Notice of Entry of Order

Filed By: Defendant J. Morales, Inc.
Notice Of Entry Of Order Granting J Morales Inc. s Emergency Motion To Set Aside Judgment And Stay Execution Of Judgment

12/01/2020



Motion to Dismiss

Filed By: Defendant J. Morales, Inc.
Motion to Dismiss

12/02/2020



Clerk's Notice of Hearing

Notice of Hearing

12/11/2020



Notice of Appeal

Filed By: Plaintiff Vargas, Max
Notice of Appeal

12/11/2020



Case Appeal Statement

Filed By: Plaintiff Vargas, Max
Case Appeal Statement

DISPOSITIONS

07/25/2019

Default Judgment Plus Legal Interest (Judicial Officer: Bare, Rob)

Debtors: Ortiz Family, LLC (Defendant)

Creditors: Max Vargas (Plaintiff)

Judgment: 07/25/2019, Docketed: 07/25/2019

Total Judgment: 1,706,214.75

11/24/2020

Amended Judgment Vacated (Judicial Officer: Bare, Rob)

Debtors: J. Morales, Inc. (Defendant)

Creditors: Max Vargas (Plaintiff)

Judgment: 11/24/2020, Docketed: 11/25/2020

Total Judgment: 1,706,214.75

HEARINGS

04/16/2019



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of Court, for judicial economy, a prove up hearing on Plaintiff's Motion for Default Judgment will be heard on for April 25, 2019, at 10:30 a.m. CLERK'S NOTE: A copy

CASE SUMMARY

CASE NO. A-18-768988-C

of this minute order was distributed to the following: Oscar Peralta, Esq.
(oscar@peraltalawgroup.com)/lk;

04/24/2019



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of the parties, prove up hearing will be heard on June 18, 2019 at 10:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

06/18/2019



Prove Up (10:30 AM) (Judicial Officer: Bare, Rob)

Prove-up Re: Plaintiff's Motion for Default Judgment

Pursuant to scheduling conflict

Default Entered;

Journal Entry Details:

Defendant not present. Court finds the documents demonstrated an award for past medical bills and lost wages and costs. The question is the pain and suffering. Max Vargas SWORN AND TESTIFIED. Court advised it seems to the Court the evidence of the medical damages was consistent with the punitive damages claim, as the extent of the injuries are consistent with using excessive force, noting there has been a significant change in life. COURT ORDERED, default judgment GRANTED; past medical bills \$134,152.93, pain and suffering \$200,000.00; future pain and suffering \$200,000.00 and punitive damages in the amount of \$1,000,000.00. Mr. Peralta to prepare Order. ;

11/06/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Formal Request to Appear Remotely

Minute Order - No Hearing Held;

Journal Entry Details:

Department 32 Formal Request to Appear REMOTELY for the November 10, 2020 Hearing Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 625 010 659 Meeting URL: <https://bluejeans.com/625010659> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/6/20 ;

11/10/2020



Motion to Set Aside (11:00 AM) (Judicial Officer: Bare, Rob)

Emergency Motion to Set Aside Judgment and Stay Execution of Judgment

Motion Granted;

Journal Entry Details:

In compliance with Administrative Order 20-1, the above parties participated by BlueJeans audio and/or video conferencing. Arguments by counsel regarding the applicability of NRC 60(b) and other case law in support of and in opposition of the Motion. Following arguments of counsel, Court ORDERED, matter taken UNDER ADVISEMENT; a minute order will

CASE SUMMARY

CASE NO. A-18-768988-C

issue.;

11/12/2020

**Minute Order** (3:00 AM) (Judicial Officer: Bare, Rob)

Emergency Motion to Set Aside Judgment and Stay Execution of Judgment

Minute Order - No Hearing Held;

Journal Entry Details:

This matter came before the Court for a hearing on Defendant J. Morales, Inc.'s ("JMI") Motion to Set Aside Default Judgment and Stay Execution of Judgment. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown, the court FINDS and ORDERS as follows. Background The case stems from an incident that occurred on March 22, 2017. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC ("OFLLC"). Plaintiff filed his complaint on February 5, 2018. Per affidavits of service, Defendants were personally served via their registered agents. Defendants failed to file an Answer or otherwise make an appearance. Thus, Default was filed on April 13, 2018. Plaintiff then sought default judgment. After a prove up hearing on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants. Notice of entry of default judgment was filed on August 6, 2019. Defendant JMI filed the instant motion on October 27, 2020 after its bank account was garnished sometime in September 2020. Relevant Law NRCP 55(c) states, "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with [NRCP] 60." "[T]he phrase 'good cause shown' in [NRCP] 55(c) is broad in scope, and includes the 'mistake, inadvertence, surprise or excusable neglect' referred to in [NRCP] 60(b)(1)." Intermountain Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co., 83 Nev. 12. NRCP 60(b) states in pertinent part, "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect [or] (6) any other reason that justifies relief." Under NRCP 60(c), such motion must be made within a reasonable time, and for NRCP 60(b)(1) motion, "not more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended." There are four factors to consider in determining whether NRCP 60(b)(1) relief from the judgment is proper based on mistake, inadvertence, surprise or excusable neglect. (1) Prompt application to remove the judgment, (2) absence of an intent to delay, (3) lack of knowledge of procedural requirements and (4) good faith. Yochum v. Davis, 653 P.2d 1215, 98 Nev. 484 (1982). See Rodriguez v. Fiesta Palms, LLC, 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned Yochum factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.) In addition, the Court must also consider the state's underlying basic policy of deciding a case on the merits whenever possible. Id. Most recently, in Willard v. Berry-Hinckley Indus., 126 Nev. Adv. Op. 53, 469 P.3d 176 (2020), the Nevada Supreme Court again affirmed the use of Yochum factors in determining the existence of sufficient grounds for NRCP 60(b)(1) relief from either order or judgment. Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect to the four Yochum factors to facilitate . . . appellate review of NRCP 60(b)(1) determinations for an abuse of discretion." Under NRCP 62(b), with posting of a security, the court may stay execution of a judgment pending disposition of NRCP 60 relief from a judgment or order. Findings and Conclusions The Court FINDS that the default judgment was properly obtained. Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was almost 15 months after the notice of entry of order was filed on August 6, 2019 even though both Defendants were validly served with complaint and summons. The Court FINDS that the correct standard to use for setting aside the judgment for mistake under NRCP 60(b)(1) is the 4 factors set forth in Yochum, Rodriguez, and Willard: (1) Prompt application to remove the judgment, (2) absence of an intent to delay, (3) lack of knowledge of procedural requirements and (4) good faith. Defendant JMI, as the party seeking to set aside the default judgment, has the burden of proof under preponderance of the evidence standard. Although Plaintiff argues that this standard is conjunctive, the standard actually appears to be a balancing test. Although the word "and" is indeed used, in Rodriguez, the Nevada Supreme Court ruled that the District Court must "balance the preference for resolving cases on the merits with the importance of enforcing procedural requirements" and it analyzed all four factors in affirming the order of the District Court that denied motion to set aside the judgment, which it need not do if the factors were indeed conjunctive. The Court FINDS that the balancing of the factors militates in favor of granting the motion and setting aside the default judgment. The Court FINDS that as to the first factor, prompt application to remove the judgment, this factor does not favor JMI. JMI failed to file the motion until October 27, 2020, almost 15 months after the notice of entry of order was filed on August 6, 2019. Thus, under NRCP 60(c), which requires such motion to be filed within 6 months, the motion is

CASE SUMMARY

CASE NO. A-18-768988-C

presumptively untimely. The Court FINDS that as to the second factor, absence of an intent to delay, this factor favors JMI. JMI makes a credible argument that once it became actually aware of the default judgment due to the writ of garnishment executed in September 2020, it immediately retained counsel and sought to set it aside to protect its financial interests without an intent to delay the proceedings. Plaintiff does not make any specific argument against this factor. The Court FINDS that as to the third factor, lack of knowledge of procedural requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by sophisticated businessmen who simply chose to sit on their rights and refused to participate in the case, but JMI's actions show otherwise. Instead of consulting with an attorney, JMI simply consulted with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since it did not own the nightclub at the time of the incident, that it is not liable. The Court FINDS that as to the four factor, good faith, this factor also favor JMI as Plaintiff does not make any specific argument that JMI's motion was not made in good faith. The Court FINDS that as to JMI's argument regarding the meritorious defense, it is not a factor under Rodriguez and Willard for NRCP 60(b)(1) analysis. However, it can be considered under NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6). The Court FINDS that the basic policy of deciding a case on the merits also undoubtedly favors JMI. Orders The Court ORDERS that Defendant JMI's Motion shall be GRANTED. However, the dispute over the funds already garnished from JMI's bank account shall be determined in the future when the case is heard on the merits. Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be VACATED as to Defendant JMI. The Court ORDERS that Defendant JMI shall file its Answer within 10 days of the filing of the Order. Counsel for Defendant JMI is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiff's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/12/20 ;

01/14/2021

Motion to Dismiss (9:30 AM) (Judicial Officer: Bare, Rob)
Motion to Dismiss

DATE

FINANCIAL INFORMATION

Defendant J. Morales, Inc.

Total Charges

10.50

Total Payments and Credits

10.50

Balance Due as of 12/14/2020

0.00

Plaintiff Vargas, Max

Total Charges

314.00

Total Payments and Credits

314.00

Balance Due as of 12/14/2020

0.00

DISTRICT COURT CIVIL COVER SHEET A-18-768988-C

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

Department 32

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Max Vargas

Defendant(s) (name/address/phone):

Ortiz Family LLC d/b/a El Sellito Rojo

J Morales, Inc.

Attorney (name/address/phone):

Oscar Peralta

101 Convention Center Dr., Ste. 340

Las Vegas, NV 89109

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input checked="" type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ	Other Civil Filing	
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

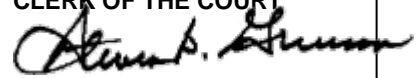
Business Court filings should be filed using the Business Court civil coversheet.

2/5/2018

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **OGM**
2 Ogonna Brown, Esq.
3 Nevada Bar No. 7589
4 obrown@lrrc.com
5 Adrienne Brantley-Lomeli, Esq.
6 Nevada Bar No. 14486
7 abrantley-lomeli@lrrc.com
8 LEWIS ROCA ROTHGERBER CHRISTIE LLP
9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, NV 89169
11 Tel: 702.949.8200
12 Fax: 702.949.8398

13 *Counsel for Defendant J Morales Inc.*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 MAX VARGAS, individually;

17 Plaintiff,

18 v.

19 ORTIZ FAMILY LLC, d/b/a EL SELLITO
20 ROJO; J MORALES INC.; DOE
21 BOUNCERS I – V; DOES VI – X; and ROE
22 CORPORATIONS I through X-XV, inclusive,

23 Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**ORDER GRANTING J MORALES INC.'S
EMERGENCY MOTION TO SET ASIDE
JUDGMENT AND STAY EXECUTION
OF JUDGMENT**

Date of Hearing: November 10, 2020

Time of Hearing: 11:00 a.m.

Judge: Hon. Rob Bare

24 On November 10, 2020, this matter came on for hearing on shortened time on Defendant J
25 Morales Inc.'s ("JMI") Emergency Motion to Set Aside Judgment and Stay Execution of Judgment
26 ("Motion") in Department XXXII of the Eighth Judicial District Court, Clark County, Nevada, with
27 Hon. Rob Bare presiding. Adrienne Brantley-Lomeli, Esq. of the law firm of Lewis Roca Rothgerber
28 Christie LLP appeared on behalf of JMI, and Oscar Peralta, Esq. of the law office of Peralta Law
Group appeared on behalf of Plaintiff, Max Vargas ("Plaintiff").¹ The Court having considered the
Motion and filings related thereto, having heard the arguments presented by the Parties concerning
the Motion, taking this matter under advisement after entertaining the oral argument of the Parties,
and good cause appearing therefor, the Court hereby finds and concludes as follows:

...

...

¹ Collectively, the Plaintiff and the Defendants shall be referred to hereinafter as the "Parties".

FINDINGS OF FACT

1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay Execution of Judgment, and incorporates them as though fully set forth herein.

2. This case stems from an alleged incident that occurred on March 22, 2017.

3. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC (“OFLLC”) (collectively, JMI and OFLLC shall be referred to hereinafter as “Defendants”).

4. El Sellito Rojo’s principal place of business is 3977 E. Vegas Valley Drive, Las Vegas, Nevada, 89121 (APN 161-07-701-002) (the “Property”).

5. Plaintiff filed his Complaint on February 5, 2018.

6. Per Affidavits of Service filed with the Court on April 3, 2018, Defendants were personally served via their registered agents.

7. Defendants failed to file an Answer or otherwise make an appearance.

8. Thus, Default was filed against each Defendant on April 13, 2018.

9. Plaintiff then sought default judgment by filing an Application on September 19, 2018.

10. After a prove-up hearing held on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants (“Judgment”).

11. Notice of Entry of Default Judgment was filed on August 6, 2019.

12. Defendant JMI filed the instant Motion on October 27, 2020 after its bank account was garnished sometime in September 2020.

13. In its Motion, JMI requested setting aside the Judgment and allowing the case to be heard on its merits, to stay of execution of the Judgment to prevent any further seizure of JMI’s assets prior to the Court’s final determination on the Motion.

14. On November 6, 2020, Plaintiff filed his Opposition to the Motion (“Opposition”).

15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).

18. To the extent any of the foregoing Findings of Fact are more properly deemed a Conclusion of Law, they may be so construed.

- a. (1) Prompt application to remove the judgment;
- b. (2) absence of an intent to delay;
- c. (3) lack of knowledge of procedural requirements; and
- d. (4) good faith.

1 *Yochum v. Davis*, 653 P.2d 1215, 98 Nev. 484 (1982). *See also Rodriguez v. Fiesta Palms, LLC*,
2 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned *Yochum*
3 factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.)

4 6. In addition, the Court must also consider the state's underlying basic policy of
5 deciding a case on the merits whenever possible. *Id.*

6 7. Most recently, in *Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d
7 176 (2020), the Nevada Supreme Court again affirmed the use of *Yochum* factors in determining the
8 existence of sufficient grounds for NRCP 60(b)(1) relief from either order or judgment.
9 Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect
10 to the four *Yochum* factors to facilitate . . . appellate review of NRCP 60(b)(1) determinations for
11 an abuse of discretion."

12 8. Under NRCP 62(b), with posting of a security, the court may stay execution of a
13 judgment pending disposition of NRCP 60 relief from a judgment or order.

14 9. Accordingly, the Court **FINDS** that the default judgment was properly obtained.
15 Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was
16 almost 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019 even
17 though both Defendants were validly served with complaint and summons.

18 10. The Court **FINDS** that the correct standard to use for setting aside the judgment for
19 mistake under NRCP 60(b)(1) is the 4-factor test set forth in *Yochum*, *Rodriguez*, and *Willard*, as
20 follows:

- 21 (1) Prompt application to remove the judgment;
- 22 (2) absence of an intent to delay;
- 23 (3) lack of knowledge of procedural requirements; and
- 24 (4) good faith.

25 11. Defendant JMI, as the party seeking to set aside the default judgment, has the burden
26 of proof under preponderance of the evidence standard.

27 12. Although Plaintiff argues that this standard is conjunctive, the standard actually
28 appears to be a balancing test.

1 13. Although the word “and” is indeed used, in *Rodriguez*, the Nevada Supreme Court
2 ruled that the District Court must “balance the preference for resolving cases on the merits with the
3 importance of enforcing procedural requirements” and it analyzed all four factors in affirming the
4 order of the District Court that denied motion to set aside the judgment, which it need not do if the
5 factors were indeed conjunctive.

6 14. The Court **FINDS** that the balancing of the factors militates in favor of granting the
7 motion and setting aside the default judgment.

8 15. The Court **FINDS** that as to the first factor, prompt application to remove the
9 judgment, this factor does not favor JMI. JMI failed to file its Motion until October 27, 2020, almost
10 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019. Thus, under
11 NRCP 60(c), which requires such motion to be filed within 6 months, the motion is presumptively
12 untimely.

13 16. The Court **FINDS** that as to the second factor, absence of an intent to delay, this
14 factor favors JMI. JMI makes a credible argument that once it became actually aware of the default
15 judgment due to the Writ of Garnishment executed in September 2020, it immediately retained
16 counsel and sought to set it aside to protect its financial interests without an intent to delay the
17 proceedings. Plaintiff does not make any specific argument against this factor.

18 17. The Court **FINDS** that as to the third factor, lack of knowledge of procedural
19 requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by
20 sophisticated businessmen who simply chose to sit on their rights and refused to participate in the
21 case, but JMI’s actions show otherwise. Instead of consulting with an attorney, JMI simply consulted
22 with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since
23 it did not own the nightclub at the time of the incident, that it is not liable.

24 18. The Court **FINDS** that as to the four factor, good faith, this factor also favors JMI as
25 Plaintiff does not make any specific argument that JMI's motion was not made in good faith.

26 19. The Court **FINDS** that as to JMI's argument regarding the meritorious defense, it is
27 not a factor under *Rodriguez* and *Willard* for NRCP 60(b)(1) analysis. However, it can be considered
28 under a NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if

JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified.

20. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6).

21. The Court **FINDS** that the basic policy of deciding a case on the merits also undoubtedly favors JMI.

22. To the extent any of the foregoing Conclusions of Law are more properly deemed a Finding of Fact, they may be so construed.

ORDER

Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,

1. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant JMI's Motion shall be **GRANTED**.

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be **VACATED** as to Defendant JMI.

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant JMI shall file its Answer within 10 days of the filing of this Order.

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the dispute over the funds already garnished by Plaintiff from JMI's bank account shall be determined in the future when the case is heard on the merits.

Dated this 24th day of November, 2020.



DISTRICT COURT JUDGE

ROB BARE

HGL

Respectfully Submitted:
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna Brown, Esq. (NBN 7589)
Adrienne Brantley-Lomeli, Esq. (NBN 14486)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Attorneys for Defendant J Morales Inc.

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Approved as to form:

PERALTA LAW GROUP

By: /s/ Oscar Peralta

OSCAR PERALTA, ESQ. (NBN 13559)

101 Convention Center Dr., Suite 340

Las Vegas, Nevada 89109

(702) 758-8700

Attorneys for Plaintiff

From: Oscar Peralta <oscar@peraltalawgroup.com>
Sent: Monday, November 23, 2020 5:28 PM
To: Brown, Ogonna
Cc: Jackson, Kennya; Dale, Margaret
Subject: Re: Order Granting Motion to Set Aside Judgment(112817796.1).docx

[EXTERNAL]

Confirmed. Thank you

On Mon, Nov 23, 2020 at 5:09 PM Brown, Ogonna <OBrown@lrrc.com> wrote:

Thanks, Oscar. Please confirm that I may affix your electronic signature. Have a good night.

Ogonna Brown

Partner
702.474.2622 office
702.949.8398 fax
OBrown@lrrc.com

COVID-19 questions?
Connect to our [Rapid Response Team](#)
for answers and resources.

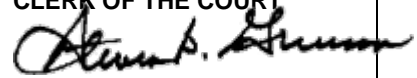
Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com



Because what matters
to you, matters to us.

[Read](#) our client service principles



1 **NEOJ**
2 Ogonna Brown, Esq.
3 Nevada Bar No. 7589
4 obrown@lrrc.com
5 Adrienne Brantley-Lomeli, Esq.
6 Nevada Bar No. 14486
7 abrantley-lomeli@lrrc.com
8 LEWIS ROCA ROTHGERBER CHRISTIE LLP
9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, NV 89169
11 Tel: 702.949.8200
12 Fax: 702.949.8398

13 *Counsel for Defendant J Morales Inc.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

14 MAX VARGAS, individually;

15 Plaintiff,

16 v.

17 ORTIZ FAMILY LLC, d/b/a EL SELLITO
18 ROJO; J MORALES INC.; DOE
19 BOUNCERS I – V; DOES VI – X; and ROE
20 CORPORATIONS I through X-XV, inclusive,

21 Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**NOTICE OF ENTRY OF ORDER
GRANTING J MORALES INC.'S
EMERGENCY MOTION TO SET ASIDE
JUDGMENT AND STAY EXECUTION
OF JUDGMENT**

Date of Hearing: November 10, 2020

Time of Hearing: 11:00 a.m.

Judge: Hon. Rob Bare

22 **NOTICE IS HEREBY GIVEN** that the Order Granting J Morales Inc.'s Emergency
23 Motion To Set Aside Judgment And Stay Execution Of Judgment has been entered on November
24 24, 2020, in the above-entitled action.

25 A copy of said Order is attached hereto as **Exhibit "1"**.

26 DATED this 24th day of November, 2020.

27 LEWIS ROCA ROTHGERBER CHRISTIE LLP

28 By: /s/ Ogonna M. Brown

Ogonna M. Brown, Esq.

Nevada Bar No. 7589

3993 Howard Hughes Parkway, Suite 600

Las Vegas, NV 89169

Attorneys for Plaintiff Pacific Premier Bank

CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b), and EDCR 7.26, I certify that on November 24, 2020, I served a copy of **NOTICE OF ENTRY OF ORDER GRANTING J MORALES INC.'S EMERGENCY MOTION TO SET ASIDE JUDGMENT AND STAY EXECUTION OF JUDGMENT** on all parties via the Odyssey Court e-file system:

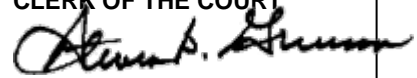
☒ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or

Oscar Peralta oscar@peraltalawgroup.com
Alexandria Guzman alex@peraltalawgroup.com
Attorneys for Plaintiffs

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below.

/s/ Kennya Jackson
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT “1”



1 **OGM**
2 Ogonna Brown, Esq.
3 Nevada Bar No. 7589
4 obrown@lrrc.com
5 Adrienne Brantley-Lomeli, Esq.
6 Nevada Bar No. 14486
7 abrantley-lomeli@lrrc.com
8 LEWIS ROCA ROTHGERBER CHRISTIE LLP
9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, NV 89169
11 Tel: 702.949.8200
12 Fax: 702.949.8398

13 *Counsel for Defendant J Morales Inc.*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 MAX VARGAS, individually;

17 Plaintiff,

18 v.

19 ORTIZ FAMILY LLC, d/b/a EL SELLITO
20 ROJO; J MORALES INC.; DOE
21 BOUNCERS I – V; DOES VI – X; and ROE
22 CORPORATIONS I through X-XV, inclusive,

23 Defendants.

Case No.: A-18-768988-C

Dept. No.: 32

**ORDER GRANTING J MORALES INC.'S
EMERGENCY MOTION TO SET ASIDE
JUDGMENT AND STAY EXECUTION
OF JUDGMENT**

Date of Hearing: November 10, 2020

Time of Hearing: 11:00 a.m.

Judge: Hon. Rob Bare

24 On November 10, 2020, this matter came on for hearing on shortened time on Defendant J
25 Morales Inc.'s ("JMI") Emergency Motion to Set Aside Judgment and Stay Execution of Judgment
26 ("Motion") in Department XXXII of the Eighth Judicial District Court, Clark County, Nevada, with
27 Hon. Rob Bare presiding. Adrienne Brantley-Lomeli, Esq. of the law firm of Lewis Roca Rothgerber
28 Christie LLP appeared on behalf of JMI, and Oscar Peralta, Esq. of the law office of Peralta Law
Group appeared on behalf of Plaintiff, Max Vargas ("Plaintiff").¹ The Court having considered the
Motion and filings related thereto, having heard the arguments presented by the Parties concerning
the Motion, taking this matter under advisement after entertaining the oral argument of the Parties,
and good cause appearing therefor, the Court hereby finds and concludes as follows:

...

...

¹ Collectively, the Plaintiff and the Defendants shall be referred to hereinafter as the "Parties".

FINDINGS OF FACT

1. This Court refers to and adopts those Findings of Fact and Conclusions of Law as already set forth in its November 12, 2020, Minute Order: Motion to Set Aside Judgment and Stay Execution of Judgment, and incorporates them as though fully set forth herein.

2. This case stems from an alleged incident that occurred on March 22, 2017.

3. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC (“OFLLC”) (collectively, JMI and OFLLC shall be referred to hereinafter as “Defendants”).

4. El Sellito Rojo’s principal place of business is 3977 E. Vegas Valley Drive, Las Vegas, Nevada, 89121 (APN 161-07-701-002) (the “Property”).

5. Plaintiff filed his Complaint on February 5, 2018.

6. Per Affidavits of Service filed with the Court on April 3, 2018, Defendants were personally served via their registered agents.

7. Defendants failed to file an Answer or otherwise make an appearance.

8. Thus, Default was filed against each Defendant on April 13, 2018.

9. Plaintiff then sought default judgment by filing an Application on September 19, 2018.

10. After a prove-up hearing held on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants (“Judgment”).

11. Notice of Entry of Default Judgment was filed on August 6, 2019.

12. Defendant JMI filed the instant Motion on October 27, 2020 after its bank account was garnished sometime in September 2020.

13. In its Motion, JMI requested setting aside the Judgment and allowing the case to be heard on its merits, to stay of execution of the Judgment to prevent any further seizure of JMI’s assets prior to the Court’s final determination on the Motion.

14. On November 6, 2020, Plaintiff filed his Opposition to the Motion (“Opposition”).

15. On November 9, 2020, JMI filed its Reply in support of the Motion (“Reply”).

CONCLUSIONS OF LAW

- a. (1) Prompt application to remove the judgment;
- b. (2) absence of an intent to delay;
- c. (3) lack of knowledge of procedural requirements; and
- d. (4) good faith.

1 *Yochum v. Davis*, 653 P.2d 1215, 98 Nev. 484 (1982). *See also Rodriguez v. Fiesta Palms, LLC*,
2 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned *Yochum*
3 factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.)

4 6. In addition, the Court must also consider the state's underlying basic policy of
5 deciding a case on the merits whenever possible. *Id.*

6 7. Most recently, in *Willard v. Berry-Hinckley Indus.*, 136 Nev. Adv. Op. 53, 469 P.3d
7 176 (2020), the Nevada Supreme Court again affirmed the use of *Yochum* factors in determining the
8 existence of sufficient grounds for NRCP 60(b)(1) relief from either order or judgment.
9 Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect
10 to the four *Yochum* factors to facilitate . . . appellate review of NRCP 60(b)(1) determinations for
11 an abuse of discretion."

12 8. Under NRCP 62(b), with posting of a security, the court may stay execution of a
13 judgment pending disposition of NRCP 60 relief from a judgment or order.

14 9. Accordingly, the Court **FINDS** that the default judgment was properly obtained.
15 Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was
16 almost 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019 even
17 though both Defendants were validly served with complaint and summons.

18 10. The Court **FINDS** that the correct standard to use for setting aside the judgment for
19 mistake under NRCP 60(b)(1) is the 4-factor test set forth in *Yochum*, *Rodriguez*, and *Willard*, as
20 follows:

- 21 (1) Prompt application to remove the judgment;
- 22 (2) absence of an intent to delay;
- 23 (3) lack of knowledge of procedural requirements; and
- 24 (4) good faith.

25 11. Defendant JMI, as the party seeking to set aside the default judgment, has the burden
26 of proof under preponderance of the evidence standard.

27 12. Although Plaintiff argues that this standard is conjunctive, the standard actually
28 appears to be a balancing test.

1 13. Although the word “and” is indeed used, in *Rodriguez*, the Nevada Supreme Court
2 ruled that the District Court must “balance the preference for resolving cases on the merits with the
3 importance of enforcing procedural requirements” and it analyzed all four factors in affirming the
4 order of the District Court that denied motion to set aside the judgment, which it need not do if the
5 factors were indeed conjunctive.

6 14. The Court **FINDS** that the balancing of the factors militates in favor of granting the
7 motion and setting aside the default judgment.

8 15. The Court **FINDS** that as to the first factor, prompt application to remove the
9 judgment, this factor does not favor JMI. JMI failed to file its Motion until October 27, 2020, almost
10 15 months after the Notice of Entry of Default Judgment was filed on August 6, 2019. Thus, under
11 NRCP 60(c), which requires such motion to be filed within 6 months, the motion is presumptively
12 untimely.

13 16. The Court **FINDS** that as to the second factor, absence of an intent to delay, this
14 factor favors JMI. JMI makes a credible argument that once it became actually aware of the default
15 judgment due to the Writ of Garnishment executed in September 2020, it immediately retained
16 counsel and sought to set it aside to protect its financial interests without an intent to delay the
17 proceedings. Plaintiff does not make any specific argument against this factor.

18 17. The Court **FINDS** that as to the third factor, lack of knowledge of procedural
19 requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by
20 sophisticated businessmen who simply chose to sit on their rights and refused to participate in the
21 case, but JMI’s actions show otherwise. Instead of consulting with an attorney, JMI simply consulted
22 with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since
23 it did not own the nightclub at the time of the incident, that it is not liable.

24 18. The Court **FINDS** that as to the four factor, good faith, this factor also favors JMI as
25 Plaintiff does not make any specific argument that JMI's motion was not made in good faith.

26 19. The Court **FINDS** that as to JMI's argument regarding the meritorious defense, it is
27 not a factor under *Rodriguez* and *Willard* for NRCP 60(b)(1) analysis. However, it can be considered
28 under a NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if

JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified.

20. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6).

21. The Court **FINDS** that the basic policy of deciding a case on the merits also undoubtedly favors JMI.

22. To the extent any of the foregoing Conclusions of Law are more properly deemed a Finding of Fact, they may be so construed.

ORDER

Therefore, based upon the foregoing Findings of Fact and Conclusions of Law,

1. **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant JMI's Motion shall be **GRANTED**.

2. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be **VACATED** as to Defendant JMI.

3. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant JMI shall file its Answer within 10 days of the filing of this Order.

4. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the dispute over the funds already garnished by Plaintiff from JMI's bank account shall be determined in the future when the case is heard on the merits.

Dated this 24th day of November, 2020.



DISTRICT COURT JUDGE

ROB BARE

HBL

Respectfully Submitted:
LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Ogonna Brown
Ogonna Brown, Esq. (NBN 7589)
Adrienne Brantley-Lomeli, Esq. (NBN 14486)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
Tel: 702.949.8200
Attorneys for Defendant J Morales Inc.

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Approved as to form:
PERALTA LAW GROUP

By: /s/ Oscar Peralta
OSCAR PERALTA, ESQ. (NBN 13559)
101 Convention Center Dr., Suite 340
Las Vegas, Nevada 89109
(702) 758-8700
Attorneys for Plaintiff

From: Oscar Peralta <oscar@peraltalawgroup.com>
Sent: Monday, November 23, 2020 5:28 PM
To: Brown, Ogonna
Cc: Jackson, Kennya; Dale, Margaret
Subject: Re: Order Granting Motion to Set Aside Judgment(112817796.1).docx

[EXTERNAL]

Confirmed. Thank you

On Mon, Nov 23, 2020 at 5:09 PM Brown, Ogonna <OBrown@lrrc.com> wrote:

Thanks, Oscar. Please confirm that I may affix your electronic signature. Have a good night.

Ogonna Brown

Partner
702.474.2622 office
702.949.8398 fax
OBrown@lrrc.com

COVID-19 questions?
Connect to our [Rapid Response Team](#)
for answers and resources.

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com



Because what matters
to you, matters to us.

[Read](#) our client service principles

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

April 16, 2019

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

April 16, 2019 3:00 AM Minute Order

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Lauren Kidd

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of Court, for judicial economy, a prove up hearing on Plaintiff's Motion for Default Judgment will be heard on for April 25, 2019, at 10:30 a.m.

CLERK'S NOTE: A copy of this minute order was distributed to the following: Oscar Peralta, Esq.(oscar@peraltalawgroup.com)./ /lk

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

April 24, 2019

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

April 24, 2019 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Michaela Tapia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of the parties, prove up hearing will be heard on June 18, 2019 at 10:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

June 18, 2019

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

June 18, 2019 10:30 AM Prove Up

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Louisa Garcia

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: Peralta, Oscar Attorney
Vargas, Max Plaintiff

JOURNAL ENTRIES

- Defendant not present. Court finds the documents demonstrated an award for past medical bills and lost wages and costs. The question is the pain and suffering. Max Vargas SWORN AND TESTIFIED. Court advised it seems to the Court the evidence of the medical damages was consistent with the punitive damages claim, as the extent of the injuries are consistent with using excessive force, noting there has been a significant change in life. COURT ORDERED, default judgment GRANTED; past medical bills \$134,152.93, pain and suffering \$200,000.00; future pain and suffering \$200,000.00 and punitive damages in the amount of \$1,000,000.00. Mr. Peralta to prepare Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

November 06, 2020

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

November 06, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 32 Formal Request to Appear REMOTELY for the November 10, 2020 Hearing

Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 625 010 659

Meeting URL: <https://bluejeans.com/625010659>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/6/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

November 10, 2020

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

November 10, 2020 11:00 AM Motion to Set Aside

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Carolyn Jackson

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Brantley, Adrienne R. Attorney
Peralta, Oscar Attorney

JOURNAL ENTRIES

- In compliance with Administrative Order 20-1, the above parties participated by BlueJeans audio and/or video conferencing.

Arguments by counsel regarding the applicability of NRCP 60(b) and other case law in support of and in opposition of the Motion. Following arguments of counsel, Court ORDERED, matter taken UNDER ADVISEMENT; a minute order will issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Other Negligence

COURT MINUTES

November 12, 2020

A-18-768988-C Max Vargas, Plaintiff(s)
vs.
Ortiz Family, LLC, Defendant(s)

November 12, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the Court for a hearing on Defendant J. Morales, Inc.'s ("JMI") Motion to Set Aside Default Judgment and Stay Execution of Judgment. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown, the court FINDS and ORDERS as follows.

Background

The case stems from an incident that occurred on March 22, 2017. Plaintiff alleges that he was a customer at the El Sellito Rojo nightclub and he was assaulted by the bouncer at the nightclub, which was owned by Defendants JMI and/or Ortiz Family, LLC ("OFLLC"). Plaintiff filed his complaint on February 5, 2018. Per affidavits of service, Defendants were personally served via their registered agents. Defendants failed to file an Answer or otherwise make an appearance. Thus, Default was filed on April 13, 2018. Plaintiff then sought default judgment. After a prove up hearing on June 18, 2019, the default judgment was entered on July 25, 2019 against both Defendants. Notice of entry of default judgment was filed on August 6, 2019. Defendant JMI filed the instant motion on October 27, 2020 after its bank account was garnished sometime in September 2020.

Relevant Law

NRCP 55(c) states, "For good cause shown the court may set aside an entry of default and, if a

judgment by default has been entered, may likewise set it aside in accordance with [NRCPP] 60." "[T]he phrase 'good cause shown' in [NRCPP] 55(c) is broad in scope, and includes the 'mistake, inadvertence, surprise or excusable neglect' referred to in [NRCPP] 60(b)(1)." *Intermountain Lumber & Builders Supply, Inc. v. Glens Falls Ins. Co.*, 83 Nev. 12.

NRCPP 60(b) states in pertinent part, "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect [or] (6) any other reason that justifies relief." Under NRCPP 60(c), such motion must be made within a reasonable time, and for NRCPP 60(b)(1) motion, "not more than 6 months after the date of the proceeding or the date of service of written notice of entry of the judgment or order, whichever date is later. The time for filing the motion cannot be extended."

There are four factors to consider in determining whether NRCPP 60(b)(1) relief from the judgment is proper based on mistake, inadvertence, surprise or excusable neglect. (1) Prompt application to remove the judgment, (2) absence of an intent to delay, (3) lack of knowledge of procedural requirements and (4) good faith. *Yochum v. Davis*, 653 P.2d 1215, 98 Nev. 484 (1982). See *Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 428 P.3d 255, n.2 (2018) (affirming the application for the above-mentioned Yochum factors, but noting that the fifth requirement for tendering a meritorious defense was abrogated.) In addition, the Court must also consider the state's underlying basic policy of deciding a case on the merits whenever possible. *Id.*

Most recently, in *Willard v. Berry-Hinckley Indus.*, 126 Nev. Adv. Op. 53, 469 P.3d 176 (2020), the Nevada Supreme Court again affirmed the use of Yochum factors in determining the existence of sufficient grounds for NRCPP 60(b)(1) relief from either order or judgment. Furthermore, the District Courts were instructed to "issue explicit and detailed findings with respect to the four Yochum factors to facilitate . . . appellate review of NRCPP 60(b)(1) determinations for an abuse of discretion."

Under NRCPP 62(b), with posting of a security, the court may stay execution of a judgment pending disposition of NRCPP 60 relief from a judgment or order.

Findings and Conclusions

The Court FINDS that the default judgment was properly obtained. Defendant JMI failed to make a formal appearance in the case until October 27, 2020. This was almost 15 months after the notice of entry of order was filed on August 6, 2019 even though both Defendants were validly served with complaint and summons.

The Court FINDS that the correct standard to use for setting aside the judgment for mistake under NRCPP 60(b)(1) is the 4 factors set forth in Yochum, Rodriguez, and Willard: (1) Prompt application to remove the judgment, (2) absence of an intent to delay, (3) lack of knowledge of procedural requirements and (4) good faith. Defendant JMI, as the party seeking to set aside the default judgment, has the burden of proof under preponderance of the evidence standard. Although Plaintiff argues that this standard is conjunctive, the standard actually appears to be a balancing test.

Although the word "and" is indeed used, in Rodriguez, the Nevada Supreme Court ruled that the District Court must "balance the preference for resolving cases on the merits with the importance of enforcing procedural requirements" and it analyzed all four factors in affirming the order of the District Court that denied motion to set aside the judgment, which it need not do if the factors were indeed conjunctive.

The Court FINDS that the balancing of the factors militates in favor of granting the motion and setting aside the default judgment.

The Court FINDS that as to the first factor, prompt application to remove the judgment, this factor does not favor JMI. JMI failed to file the motion until October 27, 2020, almost 15 months after the notice of entry of order was filed on August 6, 2019. Thus, under NRCP 60(c), which requires such motion to be filed within 6 months, the motion is presumptively untimely.

The Court FINDS that as to the second factor, absence of an intent to delay, this factor favors JMI. JMI makes a credible argument that once it became actually aware of the default judgment due to the writ of garnishment executed in September 2020, it immediately retained counsel and sought to set it aside to protect its financial interests without an intent to delay the proceedings. Plaintiff does not make any specific argument against this factor.

The Court FINDS that as to the third factor, lack of knowledge of procedural requirements, this factor favors JMI. Plaintiff makes an argument that Defendants were owned by sophisticated businessmen who simply chose to sit on their rights and refused to participate in the case, but JMI's actions show otherwise. Instead of consulting with an attorney, JMI simply consulted with their insurance agent, who is not an attorney, and mistakenly relied on the statement that since it did not own the nightclub at the time of the incident, that it is not liable.

The Court FINDS that as to the four factor, good faith, this factor also favor JMI as Plaintiff does not make any specific argument that JMI's motion was not made in good faith.

The Court FINDS that as to JMI's argument regarding the meritorious defense, it is not a factor under Rodriguez and Willard for NRCP 60(b)(1) analysis. However, it can be considered under NRCP 60(b)(6) analysis in considering any other reason that justifies relief. Specifically, if JMI can prove that it was not the owner of the nightclub and had no role in Plaintiff's injuries, setting aside the default judgment, which awarded Plaintiff in excess of \$1.7 million, is justified. Furthermore, although JMI mistakenly relied on what appears to be legal advice by a non-attorney, such mistaken reliance also justifies relief under 60(b)(6).

The Court FINDS that the basic policy of deciding a case on the merits also undoubtedly favors JMI.

Orders

The Court ORDERS that Defendant JMI's Motion shall be GRANTED. However, the dispute over the funds already garnished from JMI's bank account shall be determined in the future when the case is

heard on the merits. Default against Defendant JMI filed on April 13, 2018 and Default Judgment filed on July 25, 2019 shall be VACATED as to Defendant JMI.

The Court ORDERS that Defendant JMI shall file its Answer within 10 days of the filing of the Order.

Counsel for Defendant JMI is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiff's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days consistent with AO 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 11/12/20



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

OSCAR PERALTA, ESQ.
101 CONVENTION CENTER DR., STE 340
LAS VEGAS, NV 89109

DATE: December 14, 2020
CASE: A-18-768988-C

RE CASE: MAX VARGAS vs. ORTIZ FAMILY, LLC D/B/A EL SELLITO ROJO; J. MORALES, INC.

NOTICE OF APPEAL FILED: December 11, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING J MORALES INC.'S EMERGENCY MOTION TO SET ASIDE JUDGMENT AND STAY EXECUTION OF JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING J MORALES INC.'S EMERGENCY MOTION TO SET ASIDE JUDGMENT AND STAY EXECUTION OF JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MAX VARGAS,

Plaintiff(s),

vs.

ORTIZ FAMILY, LLC D/B/A EL SELLITO
ROJO; J. MORALES, INC.,

Defendant(s),

Case No: A-18-768988-C

Dept No: XXXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of December 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk